

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Diomed, Inc.,

Civil Action No. 04-10444 RGS

Plaintiff,

v.

Vascular Solutions, Inc.,

Defendant.

MOTION TO AMEND
DEFENDANT'S ANSWER AND
COUNTERCLAIMS

Pursuant to Federal Rule of Civil Procedure 15(a) and the Joint Scheduling Order in this case, Vascular Solutions, Inc. (“VSI”) submits this Motion to Amend Defendant’s Answer and Counterclaims against Plaintiff Diomed, Inc. (“Diomed”).

As grounds for this motion, VSI states as follows:

1. The Joint Scheduling Order, entered by the Court on June 10, 2004, grants the parties the right to amend their pleadings at any time up to and including October 15, 2004.
2. VSI seeks to amend its affirmative defenses and counterclaims to include patent unenforceability due to inequitable conduct (see Paragraph 31 and Counterclaim Paragraph 9 in the proposed First Amended Answer and Counterclaims). A true and correct copy of the proposed First Amended Answer and Counterclaims is attached hereto.
3. Diomed will not be unduly prejudiced by the entry of the First Amended Answer and Counterclaims at this early stage in the litigation.
4. Moreover, VSI provided Diomed’s counsel with a copy of the proposed First Amended Answer and Counterclaims on October 4, 2004, with a request that counsel review the amended counterclaim and inform VSI whether it had any objections to the proposed amendments. To date, despite a number of attempts to obtain a response from Diomed’s counsel, the request has been met with silence.

5. Therefore, justice requires that leave to amend the answer and counterclaims as proposed be given forthwith.

LOCAL RULE 7.1(A)(2) CERTIFICATION

VSI hereby certifies that it has attempted in good faith to confer with Diomed to resolve the issue raised by this motion. Specifically, as stated above, VSI forwarded its proposed First Amended Answer and Counterclaim to counsel for Diomed, Attorney Michael Albert, on October 4, 2004 for the purpose of determining whether Diomed had any objections to the proposed amendments. However, in the intervening nine days, VSI has received no response from Attorney Albert or any other representative of Diomed on this issue.

Dated: October 13, 2004

Respectfully submitted:

VASCULAR SOLUTIONS, INC.

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SO ORDERED:

Date

U.S.D.C. Judge